

REMARKS

In accordance with the foregoing, claim 1 is amended to correct formalities. No new matter is presented, and accordingly approval and entry of the foregoing are respectfully requested.

Claims 1, 3-4, 6-7, 9, 11, 13, 15-16, 18, 20, 22-23, 25, and 27-42 are pending and under consideration. Reconsideration is requested.

Items 4-5: Objection to claim 1

In items 4-5 of the Office Action, the Examiner objects to claim 1 because of the following informalities:

[O]n line 6, insert "mounted" in between the words " the" and "batteries" as 'part of the mounted batteries' is previously claimed.

(Action at page 2).

Claim 1 is amended herein to address the Examiner's concern, and thus withdrawal of the objection is requested.

Items 6-15: Rejection of claims 1, 3-4, 6-7, 9, 11, 13, 15-16, 18, 20, 22-23, 25, 27, and 30-42 under §103

In items 6-15 of the current Office Action, the Examiner rejects independent claims 1, 3, 25, and 27 (and respective dependent claims 4, 6-7, 9, 11, 13, 15-16, 18, 20, 22-23, and 30-42) under 35 U.S.C. §103(a) as being unpatentable over Takizawa et al. (U.S.P. 5,739,596) in view of combinations of Pole, II et al. (U.S.P. 6,272,642) and Dunstan (U.S.P. 5,600,230). (Current Action at pages 3-9). The rejections are traversed.

I. Action is Incomplete

Applicant submits that the current Office Action is incomplete. In the previous Amendment filed September 20, 2007 ("previous Amendment) in traversing the rejection of the claims, Applicant argued in part, that teaching by Takizawa of a switch for merely detecting a movement of a cover does not teach a switch for detecting the removal of a battery. Rather, as understood by one of ordinary skill in the art, for example, a cover can be opened or closes without removing a battery. Further, a device can have uncovered batteries that can be removed.

The Examiner does not address this argument, but merely cites sections of Takizawa that disclose detecting movement of the cover.

In addition, in the previous Amendment in traversing the rejections, the Applicant submitted one of ordinary skill in the art would have not have modified Takizawa to permit

"lowering the processing ability when the part of the mounted batteries is removed," as recited by claim 1, for example, in a manner as the Examiner asserted. Applicant submitted that by contrast, Takizawa is directed to a power supply and method that regardless of whether a battery pack is removed correctly or mistakenly teaches:

The circuit will therefore not misoperate even when battery pack 102 is . . . removed because circuit operation has already been stopped.

(Emphasis added, see, for example, 12, lines 20-23).

That is, Takizawa is designed so as to either switch power sources or stop operation.

Applicant submitted that the Examiner did not provide articulated reasoning to support such modification. In the current Office Action, the Examiner does not address this argument, but merely repeats his assertions.

Summary

Thus, Applicant requests that a replacement, nonfinal Office Action be issued with support for a rejection of the same, and with the response date accordingly reset.

II. Unsupported Official Notice Taken By Examiner

In item 20 of the current Office Action, the Examiner asserts:

other passages and figures may apply as well. . . . to fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the Examiner.

(Action at page 10, lines 12-16).

Applicant submits that any such statement by Examiner's regarding "potentially" teaching passages or teachings within the "context" are unsupported taking of official notice. As set forth in MPEP §2144.03(e):

any facts so noticed should . . . serve only to 'fill in the gaps' in an insubstantial manner which might exist in the evidentiary showing made by the Examiner to support a particular ground of rejection. It is never appropriate to rely solely on common knowledge in the art without evidentiary support in the record as the principal evidence upon which a rejection was based.

Applicant submits that any such "context" is not considered to be common knowledge or well-known in the art. See MPEP § 2144.03(A) ("the notice of facts beyond the record which may be taken by the Examiner must be "capable of such instant and unquestionable demonstration as to defy dispute") and M.P.E.P. § 2144.03(B) ("there must be some form of evidence in the record to support an assertion of common knowledge").

In addition, if the Examiner is basing the interpretation of the such "context" in support of the rejection, at least in part, on personal knowledge, the Examiner is required under 37 C.F.R. §

1.104(d)(2) to support such an assertion with an affidavit when called for by the Applicant.

Summary

Thus, Applicant calls upon the Examiner to provide support and, if applicable, an affidavit, for such statements.

III. Traverse Of Rejections

In item 16 of the current Office Action, entitled Response to Arguments, the Examiner asserts:

In response to applicant's arguments to individual Takizawa and Pole references, the examiner point(s) out that the rejection was made under 35 U.S.C. 103(a) in combination of both Takizawa and Pole.

(Action at page 9, lines 7-9).

Applicant submit to the Examiner that Applicants' arguments in traversing of the rejections of the claims in the previous Amendment and in the current Amendment in which the traversals are directed to only one of the references are in response to those cases in which the Examiner has relied on a disclosure of one of the references as teaching a feature.

Applicant submits features recited by each of the independent claims are not taught by the art relied on by the Examiner, alone or in *arguendo* combination.

Independent claim 1, for example, recites an electronic apparatus to which a plurality of batteries are detachably mounted, comprising:

a) "a removal requirement receipt section receiving a removal requirement for a part of the mounted batteries;" and

b) "a processing ability determination section responsive to the removal requirement for the part of the batteries from said removal requirement receipt section to determine whether a supplying possible electric power from the remaining batteries is an electric power capable of maintaining a processing ability or an electric power only capable of maintaining a lowered processing ability (emphasis added);" and

c) "a processing ability control section lowering the processing ability when the part of the mounted batteries is removed, while keeping the electronic apparatus operative in accordance with a decision from said processing ability determination section that the electric power is only capable of maintaining a lowered processing ability (emphasis added)." Claim 25 has a similar recitation.

In particular, Takizawa, alone or in combination, does not teach a "processing ability determination section," as recited by independent claims 1 and 25, that is responsive to the

removal requirement for the part of the batteries from said removal requirement receipt section to determine "whether a supplying possible electric power from the remaining batteries is an electric power capable of maintaining a processing ability or an electric power only capable of maintaining a lowered processing ability (emphasis added)." Claim 25 has a similar recitation.

Takizawa does not teach a lowered processing ability, let alone, determining whether the supplying possible power from the remaining batteries is an electric power is capable of maintaining such a lowered processing ability.

Further, Pole does not teach a processing ability determination section, as recited by claims 1 and 25 for example.

By contrast, Pole merely teaches a technique for switching between a high performance mode for using external power source such as AC adaptor and a low performance mode for using internal power source such as battery.

That is, Pole does not teach a determination based solely on the power of battery and thus fails to teach or suggest a determining in response to a removal requirement for a battery, whether a supplying possible electronic power from the remaining batteries is an electric power capable of maintaining a processing ability or an electric power capable of maintaining a lowered processing ability," as recited by independent claims 1 and 25, for example.

Further, according to an embodiment of the present invention, either of the high processing ability and the low processing ability can be obtained by the power supplied from the mounted batteries. This feature is not taught by even an *arguendo* combination of Takizawa or Pole.

The Examiner concedes that Takizawa merely teaches a judgment as to whether the charge level of the remaining battery is sufficient or not.

Applicant submits that neither Takizawa nor Pole teach a low processing ability is achieved by power supplied from the batteries.

By contrast, Pole merely teaches a technique for changing a mode between the higher activity state achieved when an external power source, for example, an AC adaptor is used, and a lower activity state achieved when an internal power source such as batter is used. That is, Pole teaches, by contrast, a high processing ability is obtained by power from the external power source while the low processing ability is obtained by power from the internal power source.

Thus, even an *arguendo* combination of Takizawa and Pole does not teach a

processing ability determination section.

Independent claim 3 recites an electronic apparatus to which a plurality of batteries are detachably mounted, comprising:

a) "a mounting and removal detection section detecting mounting and removal of batteries;" and

b) "a processing ability control section responsive to a detection of a removal of a battery by said mounting and removal detection section to lower a processing ability when the part of the mounted batteries is removed while keeping the electronic apparatus operative." Claim 27 has a similar recitation.

Neither Takizawa nor Pole, alone or in *arguendo* combination, teach, for example, "lower(ing) a processing ability when the part of the mounted batteries is removed," as recited in claims 3 and 27

By contrast, Takizawa merely teaches a detection switch 14 (15) that is a switch for detecting opening/closing of the cover of a battery pack.

Applicant submits that as understood in the art a switch for merely detecting a movement of a cover does not teach a switch for detecting the removal of a battery since, for example, one can open and close a cover without removing a battery or a device can have uncovered batteries that can be removed.

By contrast, Pole merely teaches a removal of a battery means a use of an external power. Therefore, even an *arguendo* combination of Takizawa and Pole merely includes a switch for detecting removal of a battery, Pole teaches that a processing ability is increased when the battery is removed, instead of being lowered, by switching to AC.

The Examiner asserts it would have been an obvious to modify Takizawa with Pole:

to include a transition to lower processing ability [lower performance state] in response to determination that low charge level instead of directly stop state . . . to trigger switching to a lower performance state if usage is low which obviously also lengthen the life of battery.

(Action at page 4).

The Examiner also asserts it would have been obvious to modify Takizawa and Pole with Dunstan:

to include Dunstan's smart battery with rechargeable battery, memory, and controller which calculates and updates remaining capacity value based on battery current, and battery's characteristics and periodically compares capacity alarm value and sends capacity alarm signal when remaining capacity value is less than the alarm value which controls its own charge cycle to optimize charge

time, prolong battery life, and prevent destructive charging conditions too.

(Action at page 7).

Even in view of *KSR International*, the U.S. Supreme Court held that in determining obviousness, one also "must ask whether the improvement is more than the predictable use of prior art elements according to their established functions (emphasis added)" slip op. 13, 82 USPQ2d at 1396. Furthermore, it is necessary "to determine whether there was an apparent reason to combine the known elements in the fashion claimed" slip op. 14, 82 USPQ2d at 1396.

The Supreme Court further affirmed the *KSR International* holdings in *In re Kahn*, 441 F. 3d 977, 988 (CA Fed. 2006), stating: "[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." (Emphasis added).

Applicant submits one of ordinary skill in the art would not have modified Takizawa to permit "lowering the processing ability when the part of the mounted batteries is removed," as recited by claim 1, for example, in a manner as the Examiner asserted.

Applicant submits that by contrast, Takizawa is directed to a power supply and method that regardless of whether a battery pack is removed correctly or mistakenly teaches:

The circuit will therefore not misoperate even when battery pack 102 is . . . removed because circuit operation has already been stopped.

(Emphasis added, see, for example, 12, lines 20-23).

Rather, Takizawa is designed so as to either switch power sources or stop operation. Applicant submits that the Examiner did not provide articulated reasoning to support such modification.

Summary

Since features recited by independent claims 1, 3, 25, and 27 (and respective dependent claims 4, 6-7, 9, 11, 13, 15-16, 18, 20, 22-23, and 30-42) are not taught by even an *arguendo* combination of the art relied on by the Examiner, the rejections should be withdrawn and claims 1, 3-4, 6-7, 9, 11, 13, 15-16, 18, 20, 22-23, 25, 27, 30-42 allowed.

Conclusion

There being no further outstanding objections or rejections, it is submitted that the application is in condition for allowance. An early action to that effect is courteously solicited.

Finally, if there are any formal matters remaining after this response, the Examiner is requested to telephone the undersigned to attend to these matters.

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If there are any additional fees associated with filing of this Amendment, please charge the same to our Deposit Account No. 19-3935.

Respectfully submitted,

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